

ESCALATED ENFORCEMENT

Question: What is the history of the Escalated Enforcement Project?

Answer: Since 1979 the Bureau of Radiation Control has greatly increased enforcement activities in the State of Texas. These enforcement actions go beyond the normal Notice of Violation sent to licensees and registrants after routine inspections. By 1990, three positions were allocated and filled to perform the functions of Escalated Enforcement. In October of 1997 the Escalated Enforcement Project was established.

Question: Under what regulatory authority does the Bureau of Radiation Control pursue escalated enforcement actions?

Answer: Chapter 401 of the Texas Health and Safety Code (the Act) and the Texas Regulations for Control of Radiation, (TRCR) Part 13 contain specific requirements for compliance and enforcement actions.

Question: What is the difference between a Compliance Action and an Enforcement Action?

Answer: Compliance actions include routine inspections, inspection reports, notices of violation, and follow-up letters. Enforcement actions are pursued when there is an immediate threat to public health, safety, or the environment, when there appears to be serious deficiencies with the Licensee's/Registrant's Radiation Safety Program, or when voluntary compliance is not achieved.

Question: What is an Escalated Enforcement Action?

Answer: Escalated enforcement actions consist of special letters, management and enforcement conferences, emergency orders (revocation orders, cease and desist orders, impoundment orders), preliminary reports for administrative penalties, referrals to the Attorney General, special inspections, inspection (health) warrants, hearings, and civil or criminal court proceedings. A general description of each is given below:

1. **Emergency Orders** -- The Act gives the Bureau authority to issue emergency orders. The Bureau may issue an emergency order only if it finds an emergency exists which requires immediate action to protect the public health and safety and/or the environment.
2. **Management Conferences** -- Management conferences are conducted in an effort to prevent more serious actions, such as a hearing or court action. If a Licensee/Registrant appears to be having some difficulties with its Radiation Safety Program, management is offered the opportunity to meet in the Bureau's Austin offices to help the licensee/registrant redirect its program so more serious enforcement actions will not be necessary.
3. **Enforcement Conferences** -- The Enforcement Conference is similar to a Management Conference, but it is more formal and usually done because of serious deficiencies in the Licensee's/Registrant's Radiation Safety Program. At the conclusion of the conference, the Bureau will routinely require the Licensee/Registrant to take certain actions to improve their radiation safety program. The Bureau may also take additional action such as decreasing the inspection interval or modify a license/registration to restrict the Licensee's/Registrant's operations.
4. **Hearings** -- Hearings are held at the request of a Licensee/Registrant. The Licensee/Registrant may contest any enforcement action taken by the Bureau. When a request for a hearing is received by the Bureau, it is forwarded to the Office of General Counsel. The Office of General Counsel assigns both an attorney to represent the Bureau and a Hearing Examiner. The Hearing Examiner schedules, conducts the Hearing, and submits their findings to the Commissioner of Health for the Commissioner's action.

5. **Preliminary Report for Assessment of Administrative Penalties** -- When the Bureau has determined there is a need for a monetary penalty, it will issue a Preliminary Report. The report specifically states violations and a monetary penalty for each violation. The Act and the TRCR authorizes the Bureau to assess a monetary penalty up to \$10,000 per violation for each day a violation occurs for non-licensees/registrants and \$5,000 per violation for each day a violation occurs for Licensees/Registrants.
6. **Negotiation Settlement** -- If a Licensee/Registrant believes monetary penalties assessed by the Bureau are excessive, they may request a negotiation settlement. The negotiation settlement is conducted by the Office of General Counsel (OGC). At the settlement meeting, the Licensee/Registrant presents the reasons they deem the assessment excessive. If an agreement on the monetary penalty can be reached between the OGC and the Licensee/Registrant, the OGC will prepare an Agreed Order which includes the agreed upon assessment. If an agreement is not met, a hearing will be set and a Hearing Examiner assigned to the case.
7. **Court Proceedings** -- Section 401.381 and 401.382 of the Act authorizes civil and criminal penalties through court proceedings, and Section 401.342 authorizes injunction proceedings.
 - a. Civil penalties, ranging from \$100 to \$25,000 for each violation and for each day that a violation occurs, may be recovered in a District Court of Travis County, or in the county in which the violation(s) occurred. The Attorney General of Texas, who has the responsibility of prosecution, has the option of selecting the court.
 - b. Criminal penalties may be sought ranging from \$2,000 to \$100,000 and/or up to 1 year of confinement in county jail. A first offense is a Class B Misdemeanor and a second offense, if previously convicted, is a Class A Misdemeanor.
 - c. Injunction proceedings may be sought by the Attorney General, through the court, to prohibit acts which the Bureau determines would constitute a violation of the Act. The Attorney General may also seek civil or criminal penalties, at the same time.

Question: How is an Enforcement Action determined?

Answer: There is no point system used to determine the need for escalated enforcement, or for the type of enforcement action. Instead, the Bureau has established guidelines to ensure standardization in the pursuance of enforcement actions.

Question: How are monetary penalties determined or assessed?

Answer: The Escalated Enforcement Project has established guidelines to standardize and ensure consistency in determining monetary penalties. Baseline assessments are determined by the violation. Actions taken or not taken by the Licensee/Registrant may be considered by the Agency in the assessment of penalties. This may include but is not limited to:

- a. Reducing the monetary penalty, in that, the Licensee/Registrant took immediate action to remediate the incident or violation; or took actions to prevent recurrence of the incident or violation (to include training or retraining and hiring a consultant); or the Licensee's/Registrant's inspection history.
- b. Increasing the monetary penalty, in that, the Licensee/Registrant failed to take immediate action to remediate the incident or violation; or failed to provide the proper notification; or the violation/incident caused contamination, excessive exposure, or damage to the environment; or failed to take the proper actions to prevent recurrence of the incident/violation; or the Licensee's/Registrant's inspection history.

- Question: I have just received a notice to appear at an enforcement conference. What do I need to do if I get such a notice?
Answer: If you receive a notice, you are requested to come to Austin for the Conference. If you have questions, call the Bureau's Escalated Enforcement Project at (512)834-6688.
- Question: Does a Licensee/Registrant need to bring an attorney to an enforcement conference?
Answer: No, most conferences are held without attorneys being present. If you decide you would like to bring an attorney, please inform the Agency prior to the conference.
- Question: Does a cease and desist order require a Licensee/Registrant to shut down their facility?
Answer: Not necessarily. A cease and desist order may require you to stop using a certain source, machine or conducting a specific procedure until specific stipulations are met. Once the requirements of the order have been met and the Agency has been properly notified, the cease and desist order may be lifted.
- Question: I have just received a Complaint against my License/Certificate of Registration. What does this mean?
Answer: This is notification that the Agency intends to revoke your License/Registration. The Licensee/Registrant is given 30 days to comply with the requirements delineated in the Complaint. After that time, if compliance is not achieved, the Agency will issue an Order revoking the License or Certificate of Registration.
- Question: I have just received an Order revoking my License/Certificate of Registration. What happens now?
Answer: This means that your license or certificate of registration is no longer valid. Compliance with the Order does not reinstate your License or Certificate of Registration. As such, you must begin anew and resubmit all the information required to obtain a new License or Certificate of Registration. In addition, any past due fees must be paid and outstanding compliance actions must be met.
- Question: I have just received an impoundment order. What do I do?
Answer: The order allows the Agency to take possession of source of radiation by whatever means it deems necessary. In some instances, sources are impounded in-place and the Licensee/Registrant is prohibited from using the source. In other cases, the Licensee/Registrant may be required to transfer the source of radiation to a person authorized to possess and/or store the source or for proper disposal. The Licensee/Registrant must meet any stipulations set forth in the Order.
- Question: If I disagree with an escalated enforcement action, what are my options?
Answer: You may request a hearing to contest the action. The procedure for requesting a hearing may be obtained from the Bureau's Escalated Enforcement Project at (512)834-6688. This information may also be included with the escalated enforcement action issued. When hearings are held both sides present their case to an impartial hearing examiner, the examiner decides the outcome, and presents his recommendations to the Commissioner of Health who will make the final decision regarding the outcome of the hearing. NOTE: If the enforcement action is an emergency order, you must still comply with the order until a final determination has been made by the Commissioner of Health.
- Question: How do I avoid any escalated enforcement actions?
Answer: Although some actions are unavoidable, the lack of response or communication with the Agency results in a large percentage of these actions. In many cases, a simple phone call requesting assistance may avoid an escalated enforcement action.